IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 1ST AUGUST 2007 / 10TH SRAVANA 1929

Crl.Rev.Pet.No. 2502 of 2007()

CRA.632/2004 of ADDL.SESSIONS COURT (ADHOC), KOTTAYAM
CC.337/2001 of JUDL.MAGISTRATE OF FIRST CLASS-III, KOTTAYAM

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REVN. PETITIONER: REVISION PETITIONERS/APPELLANTS/ACCUSED:

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1. RATHEESH, S/O. KARUNAKARAN NAIR,
   RATHEESH BHAVAN VEEDU, KUZHIPURAYIDOM KARA,
   MANARCADU VILLAGE, KOTTAYAM.

2. MATHEW, S/O. JOSEPH,
   CHETHIMATTOM VEEDU, KUZHIPURAYIDOM KARA,
   MANARCADU VILLAGE, KOTTAYAM.

3. RATHEESH, S/O. BABU,
   MANIYILAPARAMBIL VEEDU, -DO- -DO-.

BY ADV. SRI.SEBASTIAN THOMAS

RESPONDENTS: RESPONDENT/COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRIL.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 01/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.R.P. NO. 2502 of 2007

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01-08-2007

ORDER

Revision petitioners who are accused Nos. 1 to 3 in C.C. 337 of 2001 on the file of the Judl. First Class Magistrate Court-III, Kottayam for offences punishable under Sections 452, 294 (b), 324 read with Sec. 34 I.P.C. challenge the conviction entered and the sentence passed concurrently by the courts below against them.

2. The case of the prosecution can be summarised as follows:

On 14-1-2007 at about 7 p.m. the revision petitioners and the juvenile accused with the common intention of inflicting injuries on P.Ws 1 and 2 unlawfully trespassed into the house of P.W.1 in Mannarcadu Village. After entering the varanda of the said house they uttered obscene words so as to cause annoyance and mental agony to P.W.1. The first accused beat P.W.1 with an iron rod inflicting an injury on his head. The 2nd accused juvenile beat P.W.1 on her cheek with a cycle chain. Hearing the hue and cry of P.W.1, P.W.2 the husband of P.W.1 rushed to the scene. He was also attacked by the accused with an iron rod and cycle chain. At that time, the 3rd accused beat P.W.1 with a sword-stick on on the left side of her head. A4 beat both P.Ws 1 and 2 with an iron rod on their back. Seeing this, when P.W.3 the daughter of P.Ws 1 and 2 reached there and she was also attacked by the accused. The accused had thereby committed offences punishable under Sections 452, 294 (b) and 324 read with Sec. 34 I.P.C.

3. On the accused pleading not guilty to the charge

framed against them by the court below, the prosecution was permitted to adduce evidence in support of its case. The prosecution altogether examined 10 witnesses as P.Ws 1 to 10 and got marked 11 documents as Exts.P1 to P11 and two material objects as MOs 1 to 2.

4. After the close of the prosecution evidence, the accused were questioned under Sec. 313 (1) (b) Cr.P.C. with regard to the incriminating circumstances appearing against them in the evidence for the prosecution. They denied those circumstances and maintained their innocence.

6. The learned Magistrate, after trial, as per judgment dated 31-08-2004 acquitted the revision petitioners of the offence punishable under Section 294 (b) I.P.C. but convicted them under Sections 452 and 324 read with Sec. 34 I.P.C. For the said convictions each of them was sentenced to pay a fine of Rs. 1,500/- and Rs. 1000/- respectively and on default to pay the fine, to suffer simple imprisonment for two months. From out of the fine amount, a sum of Rs. 5,000/- was directed to be paid to PW1 as compensation under Section 357 (1) Cr.P.C. On appeal preferred by the revision petitioners as Crl. Appeal 632 of 2004 before the Sessions Judge, Kottayam the same was dismissed as per judgment dated 4th Feb. 2006. It is those judgments which are assailed in this revision.

7. The learned counsel appearing for the revision petitioners attacked the findings recorded by both the courts below by contending that P.W.1 had no case either before the police or before the court that house trespass was committed by

any of the accused so as to justify the conviction under Section 452 I.P.C. I cannot agree. The occurrence took place on the varandah of the house. The conviction has been concurrently recorded by the courts below after an evaluation of the oral and documentary evidence in the case. The said conviction cannot be interfered with by this Court sitting in the rarefied revisional jurisdiction in which a re-appraisal of the oral evidence is not warranted. The conviction was, therefore, rightly recorded against the revision petitioners.

8. The sentence imposed on the revision petitioners also cannot be said to be excessive or disproportionately harsh . They were sentenced to pay fine only. If at all the courts below have erred it was in not awarding any imprisonment to the revision petitioners. I see no ground to interfere with the revision which is accordingly dismissed.

V. RAMKUMAR, JUDGE.

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